

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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HAWAII ELECTRIC LIGHT COMPANY, INC.,
a Hawai'i corporation, Appellant-Appellee

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I;
BOARD OF LAND AND NATURAL RESOURCES, as the Executive Head
of the Department of Land and Natural Resources, State
of Hawai'i; DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF
HAWAI'I; WAIMANA ENTERPRISES, INC., a Hawai'i corporation;
and MAHI COOPER, Appellees-Appellees

and

PEGGY RATLIFF and KEAHOLE DEFENSE COALITION,
Appellees-Appellants in No. 21369

and

DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAI'I,
Appellee-Appellant in No. 21422
(NOS. 21369 & 21422 (CIV. NO. 96-131K))

WAIMANA ENTERPRISES, INC.,
a Hawai'i corporation, Cross-Appellant-Appellee

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I;
BOARD OF LAND AND NATURAL RESOURCES, as the Executive Head
of the Department of Land and Natural Resources, State of
Hawai'i; DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAI'I;
HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawai'i corporation;
and MAHI COOPER, Cross-Appellees-Appellees

and

PEGGY RATLIFF and KEAHOLE DEFENSE COALITION,
Cross-Appellees-Appellants in No. 21369

and

DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAI'I,
Cross-Appellee-Appellant in No. 21422
(NOS. 21369 & 21422 (CIV. NO. 96-141K))

PEGGY RATLIFF, Cross-Appellant-Appellant

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I;
BOARD OF LAND AND NATURAL RESOURCES, as the Executive Head
of the Department of Land and Natural Resources, State of
Hawai'i; DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAI'I;
HAWAI'I ELECTRIC LIGHT COMPANY, INC., a Hawai'i corporation;
WAIMANA ENTERPRISES, INC., a Hawai'i corporation; and
MAHI COOPER, Cross-Appellees-Appellees
(NOS. 21369 & 21422 (CIV. NO. 96-142K))

MAHI COOPER, Cross-Appellant-Appellee

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I;
BOARD OF LAND AND NATURAL RESOURCES, as the Executive Head
of the Department of Land and Natural Resources, State of
Hawai'i; DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAI'I;
and WAIMANA ENTERPRISES, INC., a Hawai'i corporation,
Cross-Appellees-Appellees

and

PEGGY RATLIFF and KEAHOLE DEFENSE COALITION,
Cross-Appellees-Appellants
(NOS. 21369 & 21422 (CIV. NO. 96-143K))

HAWAI'I ELECTRIC LIGHT COMPANY, INC.,
a Hawai'i corporation, Plaintiff-Appellee

vs.

PETER YOUNG,¹ in his capacity as Chairman of the Board of Land and Natural Resources, State of Hawai'i; DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I; BOARD OF LAND AND NATURAL RESOURCES, as the Executive Head of the Department of Land and Natural Resources, Defendants-Appellees

and

JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS, PARTNERSHIPS, GOVERNMENTAL UNITS OR OTHER ENTITIES 1-20, Defendants

and

KEAHOLE DEFENSE COALITION and PEGGY RATLIFF, Intervenor-Appellants (NOS. 21369 & 21422 (CIV. NO. 96-144K))

WAIMANA ENTERPRISES, INC., a Hawai'i corporation, Plaintiff-Appellee

vs.

RODNEY MAILE,² Hearing Officer for the Department of Land and Natural Resources; PETER YOUNG,³ Chairman of the Board of Land and Natural Resources, State of Hawai'i; BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I, Defendants-Appellees

and

PEGGY RATLIFF, Defendant-Appellant (NO. 21263 (CIV. NO. 94-059K))

¹ Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 43(c)(1), Peter Young, the current Chairman of the Board of Land and Natural Resources, has been substituted for Michael D. Wilson, the Chairman at the time this case was decided by the third circuit court.

² The Department of Land and Natural Resources no longer employs any hearing officers but, rather, hires hearings officers as needed. Thus, no one has been substituted for Rodney Maile, the Department's hearing officer at the relevant times indicated herein.

³ See supra note 1. Peter Young has been substituted for Keith Ahue.

JOY HANSON; BRAD HOUSER; ALICE GOO; DR. NATHALIE TUCKER;
RUSSELL WERTZ; KEICHI IKEDA; IRMA GILGER; JERRY ROTHSTEIN;
LINDAY BRADLEY, Plaintiffs-Appellees

vs.

STATE OF HAWAI'I, DEPARTMENT OF LAND AND
NATURAL RESOURCES, AND OFFICE OF ENVIRONMENTAL
QUALITY CONTROL, Defendants-Appellees

and

JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS,
PARTNERSHIPS, GOVERNMENTAL UNITS OR OTHER ENTITIES 1-20,
Defendants
(NO. 21263 (CIV. NO. 94-070K))

WAIMANA ENTERPRISES, INC., a Hawai'i corporation,
Appellant-Appellee

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I;
BOARD OF LAND AND NATURAL RESOURCES, as the Executive
Head of the Department of Land and Natural Resources,
State of Hawai'i; HAWAII ELECTRIC LIGHT COMPANY, INC.,
a Hawai'i corporation; and MAHI COOPER, Appellees-Appellees

and

PEGGY RATLIFF, Appellee-Appellant
(NO. 21263 (CIV. NO. 94-123K))

WAIMANA ENTERPRISES, INC., a Hawai'i corporation,
Plaintiff-Appellee

vs.

PETER YOUNG,⁴ in his capacity as Chairman of the
Board of Land and Natural Resources, State of Hawai'i;
STATE OF HAWAI'I, DEPARTMENT OF LAND AND NATURAL RESOURCES;
STATE OF HAWAI'I, OFFICE OF ENVIRONMENTAL QUALITY CONTROL,
Defendants-Appellees

⁴ See supra note 1.

and

JOHN DOES 1-10; DOE CORPORATIONS, PARTNERSHIPS,
GOVERNMENTAL UNITS OR OTHER ENTITIES 1-10, Defendants
(NO. 21263 (CIV. NO. 95-094K))

NO. 21369

MOTION FOR RECONSIDERATION AND ORDER OF AMENDMENT
(CIV. NOS. 96-131K; 96-141K; 96-142K; 96-143K; 96-144K;
94-059K; 94-070K; 94-123K; & 95-094K)

AUGUST 25, 2003

MOON, C.J., LEVINSON, AND ACOBA, JJ., CIRCUIT JUDGE BLONDIN,
ASSIGNED IN PLACE OF NAKAYAMA, J., RECUSED,
AND CIRCUIT JUDGE POLLACK, ASSIGNED BY REASON OF VACANCY

Upon consideration of the motion for reconsideration
filed by Appellees-Appellants Peggy Ratliff and Keahole Defense
Coalition, the attachments thereto, and the record,

IT IS HEREBY ORDERED that the motion is granted in part
as follows (deleted material is bracketed and new material is
double underscored):

1. **Line 20 from the bottom of footnote 5 on page 6:**
impact statement is required pursuant to chapter 343, or
when a contested case hearing is requested pursuant to
chapter 91, the one hundred eighty days may be extended to
an additional ninety days at the request of the applicant.
2. **Line 2-3 from the top of page 11:** parties involved
were HELCO, Cooper, Ratliff[and Keahole Defense Coalition
(KDC)]¹² Waimana, and DHHL. On December 13, 1995,
3. **Footnote twelve on page 11:** Ratliff and [KDC]
Keahole Defense Fund (KDC) have filed joint briefs.

4. **Line 5-6 from the top of page 12:** circuit court.
On May 22, [1998,] 1996, Cooper, Ratliff, and Waimana

5. **Lines 10-11 from the top of page 12:** (the second agency appeal). [The parties later stipulated to the intervention of both Ratliff and KDC.] On January 2, 1997, the

6. **Line 1 from the bottom of page 32:** Add the following footnote 30 after the word "application":

On July 3, 2001, the court granted a HRCF Rule 60(b)(6) motion for post-judgment relief, but reserved disposition of the motion until the conclusion of this appeal. Because the merits of the HRCF Rule 60(b) motion are not presented to this court on appeal, this opinion does not affect the court's jurisdiction to resolve the HRCF Rule 60(b) motion on remand.

7. **Line 2 from the top of page 33:** renumber footnote 30 to footnote 31.

8. **Line 10 from the top of page 33:** Appellant [Kealoha] Keahole Defense

An amended opinion is being filed concurrently with this order, incorporating the foregoing amendments. The Clerk of the Court is directed to provide a copy of this order and a copy of the amended opinion to the parties and notify the publishing agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order of amendment to those who received the previously filed opinion.

IT IS FURTHER ORDERED that all other points raised in the motion for reconsideration are denied.

Michael Matsukawa, on the motion for Defendant-Appellant/Appellee-Appellant & Appellee/Cross-Appellee/Cross-Appellant Peggy Ratliff; and Intervenor-Appellant Keahole Defense Coalition.